

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -
4 INTEGRATED HEALTH SERVICES : Civil Action
5 OF CLIFF MANOR, INC., :
6 et al., :
7 :
8 Plaintiffs, :
9 :
10 v. :
11 :
12 THCI COMPANY LLC, :
13 :
14 Defendant. : No. 04-910 (GMS)

10 - - -
11 Wilmington, Delaware
12 Tuesday, February 28, 2006
13 11:45 a.m.
14 Telephone Conference
15 - - -

16 BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

17 APPEARANCES:

18 RICHARD W. RILEY, ESQ.
19 Duane Morris LLP
20 -and-
21 AMOS ALTER, ESQ.
22 Troutman Sanders LLP
23 (New York, New York)

24 Counsel for Plaintiffs

25 COLLINS J. SEITZ, JR., ESQ.
Connolly Bove Lodge & Hutz LLP
-and-
DAVID S. SAGER, ESQ.
Pitney Hardin
(New York, New York)

Counsel for Defendant

1 THE COURT: Good morning. Counsel, who is on
2 the line today for Integrated?

3 MR. ALTER: For the plaintiff, Amos Alter.

4 THE COURT: For THCI?

5 MR. SEITZ: Your Honor, this is C.J. Seitz.

6 THE COURT: Good morning, counsel.

7 MR. SAGER: Your Honor, David Sager from Pitney
8 Hardin.

9 MR. RILEY: Richard Riley from Duane Morris is
10 local counsel with Amos Alter.

11 THE COURT: Mr. Alter, you are lead for
12 Integrated?

13 MR. ALTER: Yes.

14 THE COURT: Mr. Seitz, are you lead?

15 MR. SEITZ: Yes. I will be speaking this
16 morning, Your Honor.

17 THE COURT: It seems what we need to do is just
18 go ahead and schedule the 04-910 case. I know there is the
19 master lease issue that is still awaiting my resolution.

20 UNIDENTIFIED SPEAKER: Correct.

21 THE COURT: Counsel agree it is appropriate at
22 this time to enter upon a schedule.

23 MR. SEITZ: Yes, Your Honor. May I speak to one
24 point that we wanted to surface as part of the schedule?

25 THE COURT: Okay.

1 MR. SEITZ: As Your Honor is probably aware, the
2 Plaintiffs 9, 10 and 2 are occupying nine nursing homes
3 under the master lease. We are the landlords. Delaware
4 Bankruptcy Court, in a judgment that has not been stayed,
5 ruled that the master lease is in effect unless Your Honor
6 said. That appeal is pending before you.

7 Under the master lease, the plaintiffs are
8 obligated to pay rent and provide information to us about
9 the operation of these nursing homes. During the pendency
10 of this appeal from the Bankruptcy Court ruling, they paid
11 rent for a time, but since last May they haven't paid any
12 rent.

13 Under the master lease, they now owe our clients
14 over 8 million dollars of back rent. It is running at a
15 clip of about a million each month.

16 As I said before, under the master lease, they
17 are required to provide us information about the operation
18 of these nursing homes. And they haven't been doing that,
19 either. We recognize this Court has a crushing caseload to
20 deal with. They are using that time to their advantage to
21 flaunt what is a valid judgment of the Bankruptcy Court,
22 which is now since stayed. As I said, no rent since last
23 May and 8 million bucks in the hole.

24 In the scheduling order -- we know this Court
25 has an extremely busy schedule -- we would request that some

1 time be set aside as soon as your busy schedule permits to
2 be heard on this issue. We think it would take no more than
3 an hour. It just isn't right that they are using this time
4 until the Court can turn its attention to the appeal issue
5 to simply squat in these places, run them but not pay rent
6 to the landlord.

7 To the extent Your Honor is willing, we would
8 ask that something be built into the schedule to be heard on
9 this issue as soon as your schedule permits.

10 THE COURT: Let's hear from Mr. Alter.

11 MR. ALTER: As Your Honor will have noted in our
12 pretrial, in the joint status report in preparation for
13 this, we believe that if there is no master lease in effect,
14 we have been overpaying for quite a bit, and the
15 computations are in there. At the moment, we are still
16 approximately a million dollars behind.

17 However, the primary reason we stopped paying
18 the landlord is not simply because we didn't like the
19 landlord. It is because, as I think everyone will agree,
20 these properties just don't generate enough revenue to pay
21 the rent and the creditors necessary to keep the nursing
22 homes open. We have stretched out the creditors as far as
23 we could. And we have now, in the interim, been able to
24 basically catch up with other creditors.

25 As indicated in our schedule, we are prepared

1 beginning in April to begin paying rent at approximately,
2 slightly over half the amount, let's say 60 percent of the
3 amount that plaintiff would want, that would be required if
4 the master lease were in effect. That is essentially the
5 extent that we can do without getting into trouble with our
6 other creditors again. You have got a payroll. You have
7 got to buy food and medical supplies for these patients.

8 The money just isn't there. That is what we
9 propose to do until this case is resolved.

10 We simply can't do better. Plaintiff always --
11 defendant's landlord always has its remedy if it wishes of
12 going into state court and evicting us, if that's what he
13 wants to do. But so long as the parties seem to feel it is
14 best that we continue in operation until these matters are
15 all resolved, that's what we propose to do.

16 THE COURT: Mr. Seitz, did you want to react to
17 that?

18 MR. SEITZ: Yes, Your Honor.

19 What counsel is not recognizing is that there is
20 a valid judgment from the Bankruptcy Court in Delaware which
21 says they should be paying rent right now, and they are
22 flaunting that judgment. It's just not the way our legal
23 system works. If they don't have the money, that is an
24 issue that the legal system can address other ways. But we
25 have a judgment that says that they should be paying the

1 market value rent. It's just flaunting a judgment of this
2 Court. And that is not the kind of proceeding that they
3 ought to be allowed to continue.

4 MR. ALTER: Your Honor, I agree with the
5 statement that there are other remedies in the legal system.
6 As I suggested, he has his remedies. He knows what they
7 are. He can proceed with them if he so chooses. He has not
8 chosen to do that. Therefore, this is what we propose to
9 do. If he is not happy with that, he has his remedies. I
10 couldn't deprive him of it and don't seek to deprive him of
11 it.

12 That's where we stand on that issue.

13 MR. SEITZ: Your Honor, one last point. What
14 they are doing is, again, taking advantage of the courts by
15 realizing that the Court's docket is extremely busy. And
16 they are going to continue to play this game of not paying
17 rent or offering to pay a token rent while we are awaiting
18 the decision from the Court. And that kind of gamesmanship
19 and working the system to their advantage shouldn't be
20 countenanced by the Court. That is why we would like to
21 present this as quickly as possible to the Court for relief.

22 THE COURT: I am going to put you on hold for a
23 minute, counsel.

24 (Pause.)

25 THE COURT: Counsel, apologize for the delay.

1 I think that it's fairly safe for me to
2 represent to you that within the next three weeks, if not
3 before, I will issue a ruling on the underlying bankruptcy
4 appeal. So, Mr. Seitz -- I don't think I am going to
5 require the parties to come in to argue. If I do need the
6 benefit of your oral discussion, I will certainly give you
7 ample notice.

8 MR. ALTER: For the record, Your Honor had
9 requested both parties to respond by today whether we wish
10 to re-brief the issues.

11 THE COURT: One of the things I was doing was
12 checking the docket. I see that THCI does not feel a need
13 for further briefing.

14 MR. ALTER: We are of the same view.

15 THE COURT: That is very good.

16 MR. ALTER: There should be no further delay in
17 that regard. Again, this may be somewhat presumptuous,
18 given Your Honor's heavy schedule, heavy docket, as my
19 adversary noted, which I certainly understand. But very
20 central to this case is not only the appeal but also there
21 is, we have an under-advisement motion for partial summary
22 judgment.

23 THE COURT: I am aware of that. There is a
24 motion for a preliminary injunction as well.

25 When was that motion for partial summary

1 judgment filed? Since the matter came here from Missouri?

2 MR. ALTER: Yes.

3 THE COURT: So this motion, do I understand
4 correctly that it addresses a feature of Missouri law?

5 MR. ALTER: Yes. The motion is partial in the
6 sense it is limited only to Missouri, which is one of the
7 leases involved in the case. That is in part motivated by
8 the fact that Missouri is by far the biggest money loser and
9 the one which causes the greatest liability. Money-wise, it
10 is far more important than simply one of nine leases.

11 THE COURT: Mr. Seitz, did you have anything you
12 want to say on that?

13 MR. SEITZ: No, Your Honor. Mr. Sager is more
14 familiar with that.

15 Mr. Sager?

16 MR. SAGER: Your Honor, the preliminary
17 injunction motion that is pending is addressed at precisely
18 the remedy Mr. Alter mentioned earlier, which is eviction.
19 Mr. Alter had objected or his client had objected to that
20 motion based on the pleadings. We have since amended those.
21 We are happy to resubmit it. But we have no desire to
22 burden the Court with more paper.

23 The bottom line of the motion is we want them to
24 pay rent or leave the facilities.

25 THE COURT: I don't think you need to resubmit

1 it. I think we have got it.

2 Okay. I am wondering, counsel, in your view,
3 the determination of the -- how will the determination of
4 the bankruptcy -- will the determination of the bankruptcy
5 appeal affect this case, if so, how?

6 MR. ALTER: You have to determine which way it
7 goes. If affirmed and the other issues come up, which I
8 will discuss in a second, if it is reversed and remanded or
9 whatever, there is no lease in effect, then it is my
10 understanding -- I don't want to put words in
11 defendant's mouth -- it is my understanding there is no
12 argument that there is a guarantee, and then the complaint,
13 which seeks a declaratory judgment that if there is a master
14 lease there is no guarantee, has become academic.

15 A lot of the counterclaims which are based on
16 fraudulent conveyances from the alleged guarantor, alleged
17 fraudulent conveyances from the alleged guarantor, will also
18 disappear. There will be some minimal parts of the
19 counterclaims which will still be viable. But they are a
20 lot more handleable and, frankly, to some great degree
21 trivial.

22 If there is an affirmance on the appeal, there
23 is still left open the question is there a guarantee. As I
24 say, that is already subject to a motion for partial summary
25 judgment, which will probably go a long way to -- whether it

1 is granted or denied will go a long way to resolve the rest
2 of the questions about a guarantee.

3 MR. SEITZ: Your Honor, Mr. Sager could answer
4 this more fully, I think.

5 MR. SAGER: Your Honor, I think there are really
6 two separate issues. If the Court were to affirm the
7 Bankruptcy Court's existing order, then the issue left in
8 this case would simply be the guarantee issue and the
9 fraudulent transfer issue, and it would obviously simplify
10 things substantially.

11 But even if Your Honor were to conclude that the
12 Bankruptcy Court exceeded its authority, which we disagree
13 with, but even if that were the case, there is still an
14 issue that presents itself by virtue of their continued
15 occupancy and their continued failure to pay rent and their
16 continued failure to provide financial and operational
17 documents.

18 So the long-winded answer to Your Honor's
19 question is that, yes, the resolution of the appeal will
20 simplify and streamline certain aspects, but it will not
21 resolve all the aspects of the case. There will be more
22 work for us to do. We believe the work related to the
23 occupancy is separate and independent from that. That is a
24 question of amount and the entitlement to continue to squat,
25 and if that exists, whether there is a lease or not, given

1 they are still at the property.

2 THE COURT: So counsel agree it would be prudent
3 to schedule?

4 MR. ALTER: I am sorry. Schedule what?

5 THE COURT: The 910 matter, this matter that is
6 on the docket for today.

7 MR. SAGER: Yes, Your Honor.

8 THE COURT: The 04-910 matter.

9 MR. ALTER: I am sorry. My lack of
10 comprehension is what do you mean by scheduling?

11 THE COURT: Go ahead and enter upon a case
12 management order.

13 MR. ALTER: In that regard, we do believe that
14 the issues, for the reasons I explained earlier, in part,
15 that the issues of the appeal and whether there is a master
16 lease, and the issue of whether there is a guarantee, really
17 should precede the issues of discovery as to whether the
18 alleged guarantor has made fraudulent conveyances, et
19 cetera. We think that the defendant is trying to enforce a
20 judgment that it's several steps away from getting against
21 the alleged guarantor.

22 THE COURT: So that's a way around Robin Hood's
23 barn of saying, no, you disagree.

24 MR. ALTER: I disagree, yes. Just to make it
25 formal, we do have sort of an omnibus motion which we will

1 be making by March 13, was the date we stipulated to, we
2 will also formally request at that time a stay of the
3 counterclaims until the appeal, which hopefully will be
4 decided perhaps by then, and the issue of at least the
5 partial summary judgment motion have been decided, I should
6 say, because then either the counterclaims will be academic
7 or alternatively they will be real. At the moment the
8 discovery sought, for instance, is quite extensive as to
9 assets and business affairs of business partners or
10 relatives or whatever you want to call it or associates of
11 the guarantor. And to say that the guarantor has liability
12 at this stage is at least two steps removed.

13 THE COURT: What I am understanding, I think it
14 was Mr. Sager, from his response to my question, the appeal
15 is only going to resolve the issue of the master lease.

16 MR. SAGER: Correct.

17 THE COURT: There still will remain the issue of
18 the continuing presence of the plaintiff, counsel, of your
19 client in the facilities on the land.

20 MR. ALTER: That will be true. But again, as I
21 say, we will be paying what we compute to be fair market
22 rent. And I will say that we are open to discussion on the
23 number. If they disagree, we will be happy to show them our
24 calculations.

25 And ultimately, there will be the question of

1 the guarantee. Then when the parties know what the legal
2 consequences are, either there is a master lease or there
3 isn't. If there is, either there is a guarantee or there
4 isn't. Then the parties will be much more able to deal in
5 what will then clearly be realities and not suppositions and
6 posturing, which is where we are now.

7 THE COURT: I am trying to get guidance from
8 both parties that would enable me to make a decision that
9 would cause all of us, certainly this is in I think the
10 parties' interest, to approach this in a cost-effective
11 manner. That is, to not cause the unnecessary expense.

12 MR. ALTER: That is what we have suggested,
13 number one.

14 THE COURT: On the other hand, not to waste
15 time, either.

16 MR. ALTER: No. This is in line with what I
17 have suggested. We are not going to hold up the appeal by
18 seeking to re-brief it. We would like a decision on that.
19 We would like, recognizing again Your Honor's schedule, and
20 obviously none of us --

21 THE COURT: Let me ask Mr. Seitz and Mr. Sager
22 your view of this motion for partial summary judgment. What
23 would its impact be? The ruling, that is.

24 MR. SAGER: There are nine properties, nine
25 different nursing home facilities that are ongoing. The

1 summary judgment motion is directed only as to that facility
2 that is located in Missouri. So I kind of refer to it as a
3 trial balloon, a test balloon, that they have floated. It
4 will not resolve the case. It may give the Court guidance
5 and it certainly will resolve certain issues as to the
6 Missouri property. But it is not going to end the case. I
7 assure the Court in our request that we be permitted to
8 proceed with discovery that we have no interest in
9 escalating needlessly either the fees or the Court's
10 involvement. But there are certain minimum discovery tools
11 that we would like to avail ourselves of.

12 In fact, when Your Honor conferenced this case
13 in January, the call that neither Mr. Seitz nor I were on,
14 but we do have the benefit of seeing the transcript, this
15 very issue came up, and Your Honor instructed the parties to
16 go forward with discovery, which we did by simply serving a
17 document request.

18 We will not burden the Court nor will we burden
19 unnecessarily our adversaries with discovery. But that
20 discovery is going to be necessary and appropriate to some
21 extent, and the parties can quibble over the extent, but to
22 some extent, regardless of what happens on the appeal. And
23 therefore, it's critical to our clients that we have the
24 ability to go forward.

25 I will give you one quick example, if I may.

1 That is the financial information that Mr. Seitz was talking
2 about. They won't give it to us voluntarily. They won't
3 give it to us notwithstanding a Bankruptcy Court order. We
4 are trying to get it now through discovery. And I think we
5 are entitled to it. I think the Court ultimately will
6 uphold our request. I think that should go forward. I
7 think it needs to go forward.

8 THE COURT: Okay. The Court is going to order
9 and permit discovery to move forward. Let's go ahead and
10 schedule this matter.

11 MR. ALTER: Recognizing that you have made this
12 ruling just now, I still would like to make my motion as
13 part of my omnibus motion.

14 THE COURT: What motion is that, counsel?

15 MR. ALTER: They have served some subpoenas
16 which we think are burdensome --

17 THE COURT: When you say omnibus motion, what
18 are you talking about? I don't have that feature in my
19 practice here.

20 MR. ALTER: It is a motion seeking different
21 branches of relief.

22 THE COURT: Branches of relief with regard to
23 what? Discovery?

24 MR. ALTER: Number one, it will seek --

25 THE COURT: I don't need the specific subject.

1 Are you taking about discovery?

2 MR. ALTER: It will deal with discovery, yes.

3 THE COURT: I don't permit motions practice, you
4 don't have free leave to file motions seeking protection or
5 compulsion of discovery. I will explain to you, counsel, if
6 you would wait a second, what my practice is in this regard.
7 So when you announce to me that you are going to be filing
8 an omnibus motion and you announce to me the subject of the
9 motion, I am just a little bit curious.

10 MR. ALTER: Your Honor, we did have a
11 stipulation which Your Honor so ordered which provided we
12 would be making this motion.

13 THE COURT: I do not have complete recall nor do
14 I have that stipulation in front of me, counsel. But now we
15 are going to enter upon a scheduling order in this case.
16 You can refresh my recollection, if I have acceded to a
17 request previously, I will stand by that, so you need not
18 worry in that regard.

19 Counsel, how much time do you think will be
20 needed to complete discovery in this matter?

21 MR. ALTER: If I could --

22 THE COURT: Let me hear from the other side for
23 a moment. Go ahead.

24 MR. SAGER: Your Honor, we can I think do this
25 very quickly, in a matter of months, three, four months,

1 that we can get everything done.

2 THE COURT: Mr. Alter, do you disagree?

3 MR. ALTER: As I say, putting aside that aspect,
4 another aspect of this motion I tried to make is to move
5 against the sufficiency of several counts of the
6 counterclaims, in which case -- I recognize that doesn't
7 automatically stay discovery with respect to them, but I
8 think that there is a good -- if they really do state
9 claims, which I don't believe they do, some of which can be
10 cured by repleading, some of which cannot, you just can't
11 get some of the relief that they seek, I don't think they
12 should have discovery with respect that.

13 THE COURT: Apart from that, counsel --

14 MR. SAGER: I think the scheduling of seven
15 months is not unreasonable.

16 THE COURT: I will give you six months, counsel.

17 Now, will there be a need for expert discovery
18 in this case?

19 MR. SAGER: Your Honor, I would hope to do it
20 without. But in large measure it depends what kind of
21 cooperation and documents we get from the plaintiff. If we
22 don't, then we are going to need to put on experts to
23 demonstrate some of the facts that should be readily
24 available and documents.

25 THE COURT: Do you concur in that view, Mr.

1 Alter?

2 MR. ALTER: I do not foresee at this point in
3 time any need for experts. I am not quite sure what he
4 means. But I guess it doesn't matter.

5 THE COURT: Mr. Seitz.

6 MR. SEITZ: I agree, Your Honor.

7 THE COURT: I am assuming, six months -- tell me
8 if I am wrong -- should this matter survive to go to trial,
9 it will not be able to be brought to trial until April 9th
10 of '07. So you can see, I provide that date for you so that
11 you can see that we do have some play here.

12 MR. SEITZ: Your Honor, I think a six-month
13 period that includes fact and expert discovery should take
14 care of it.

15 THE COURT: Ms. Walker?

16 MS. WALKER: August 28th.

17 THE COURT: August 28th will be the cutoff for
18 all discovery in this matter. That is August 28th of '06.

19 MR. ALTER: Your Honor, you before suggested, if
20 I understood correctly, you are going to tell --

21 THE COURT: I am, in a moment, Mr. Alter.

22 So I am going to set the cutoff for issue and
23 case-dispositive filings two weeks subsequent to the 28th.

24 MS. WALKER: September 11th.

25 THE COURT: September 11th. You will brief

1 under our Local Rule. If you need relief from the Local
2 Rule as to motions and briefing, and you arrive upon a
3 stipulation among yourselves, counsel, and you transmit that
4 stipulation, please do so with an explanation as to the
5 reason for the relief you are requesting, so as to give me
6 the opportunity to make an informed decision.

7 MR. SAGER: Your Honor, to the extent Mr. Alter,
8 his omnibus motion came to subpoenas, I am more than happy,
9 C.J. and I are more than happy to work with him to resolve
10 the need for motions. In fact, each of the subpoenas was
11 actually issued out of the Eastern District of New York. I
12 am not sure any motion relating to them would be properly
13 before the Delaware Court anyway.

14 But be that as it may, we are more than happy to
15 resolve this without burdening the Court with motions that
16 counsel should be able to deal with between themselves.

17 THE COURT: I am glad you said that, because the
18 manner in which, Mr. Alter, you raise, at least as I
19 understand it, insofar as I understand it, some of the
20 issues that you are concerned about with the Court is not
21 through motion, at least initially, but after a full
22 meet-and-confer, or several, however many it takes to come
23 to be sure that you are truly at an impasse, then you may
24 come to the Court, and only then. And you do that by both
25 parties coming, or one or the other appointing one or the

1 other to place a telephone call.

2 You will get a date for a teleconference from my
3 staff. My staff will tell you that 48 hours, no less than
4 48 hours in advance of that teleconference date and time, I
5 will need a letter of no more than two pages. And that
6 letter must be nonargumentative. And it should set forth in
7 summary fashion the nature of the disagreements that you
8 have among yourselves insofar as they affect discovery in
9 this case, and/or the schedule in the case.

10 So, no, you are not given leave to freely file
11 so-called omnibus motions, Mr. Alter.

12 MR. ALTER: I understand.

13 THE COURT: If we are not able to, or during the
14 teleconference, if I am unable to -- let me say this first.
15 If the parties are unable to come to an agreement, or if I
16 am feeling uncomfortable about ruling during the
17 teleconference, I will give you the opportunity and leave to
18 file letter briefs, anywhere from two to five pages. And if
19 I feel that really the Court and the parties would benefit
20 from a fuller exposition, I will give you leave to engage in
21 full-blown motions practice.

22 That is how those matters will be addressed.

23 Now, to the extent that those comments don't
24 address anything, Mr. Alter, that you were contemplating in
25 your omnibus motion, why don't you let me know what else you

1 were thinking about.

2 MR. ALTER: Well, I indicated that I was going
3 to move against the sufficiency. I was going to. If you
4 tell me that is already behind us, I won't. I was going to
5 move for a stay of the counterclaims until determination --

6 THE COURT: That is behind us, Mr. Alter.

7 MR. ALTER: Fair enough.

8 MR. RILEY: Your Honor, the only thing I would
9 add is, we will have to work with the other side, because we
10 did enter into a stipulation that set a deadline, or granted
11 us a deadline for moving against the subpoena. I do
12 understand Your Honor's procedures.

13 THE COURT: Well, I thought I heard someone say,
14 maybe it was Mr. Sager, say that there was a willingness to
15 discuss coming to some resolution of the subpoena issues.

16 MR. SAGER: That is absolutely correct. My
17 understanding of our stipulation was that there might be a
18 motion, a dispositive motion, or a motion to dismiss
19 directed to our amended pleading. They can assert that or
20 not in compliance with the Local Rules. I have no view one
21 way or the other at this point.

22 But on discovery issues, on the subpoena issues,
23 I, A, don't think they are before this Court, and B, even if
24 they were, I don't think this Court need be bothered with
25 them. We will work with them to do whatever is possible to

1 eliminate that kind of dispute from taking up judicial time.

2 MR. ALTER: I certainly welcome the opportunity
3 to work with them on the questions of the subpoenas.

4 There are three subpoenas issued to nonparties.
5 Two of them I would represent them. The third I don't.

6 THE COURT: Let me interrupt, counsel. If you
7 are going to work it out, that is fine, you can work it out.
8 I don't need to hear about it.

9 Mr. Alter, to the extent that -- you indicate
10 there might be the ability to discuss amending certain of
11 the counterclaims, I think it was.

12 MR. ALTER: Yes.

13 THE COURT: I am going to require that counsel
14 engage that process, to see if those matters can be resolved
15 non-judicially. To the extent that you need to file, you
16 need to file them, that is fine, if you want to challenge
17 the sufficiency of any pleading.

18 The pretrial order will be due in chambers by
19 the close of business on February 26th of '07.

20 We will convene a pretrial conference, should it
21 be necessary, on March 20th of '07, commencing at 11:00 in
22 the morning. Keep flexible that day, counsel, because that
23 time may change.

24 UNIDENTIFIED SPEAKER: Could you repeat that
25 date?

1 THE COURT: March 20th of '07, 11:00 a.m.

2 Trial will commence on April 9th. It is a Bench
3 trial, as I understand it. Is that correct?

4 UNIDENTIFIED SPEAKER: At the moment, certainly,
5 in response to the counterclaims, my guess is it will be a
6 Bench trial.

7 THE COURT: Then do you have any sense of how
8 much time the Court should set aside, gentlemen?

9 MR. ALTER: We have indicated in the pretrial
10 order that depends on what issues are left open depending on
11 your resolution of the appeal and of the partial summary
12 judgment motion.

13 Certainly, if the issue -- either way that the
14 appeal goes, the only thing that would be triable would be
15 the major issue, would be whether there is or is not a
16 guarantee. I believe on the whole that is based on the
17 legal consequences of various documents and virtually no
18 testimony will be necessary perhaps to authenticate the
19 documents.

20 THE COURT: We are talking about roughly a day?

21 MR. ALTER: Yes, I would estimate a day. My
22 adversary has estimated seven days. He will speak for
23 himself.

24 THE COURT: Counsel on the other side?

25 MR. SAGER: Your Honor, I put that in based on,

1 Mr. Alter is correct, if we were to have to try all of the
2 issues. If you think there is a damages component to this,
3 we would expect to take some time to put that on. I would
4 join Mr. Alter in my hope this could be done expeditiously,
5 more likely two or three days. But certainly we could keep
6 it within a week.

7 THE COURT: We will set it down for three days,
8 out of an abundance of caution.

9 As I understand it, this matter did proceed
10 before a mediator, a neutral, Vince Poppiti, and the matter
11 was obviously not successfully concluded at that time.

12 So, then, is it counsel's view that it would be
13 a waste of our Magistrate Judge's time to refer this to her?

14 MR. SAGER: Your Honor, I never like to say
15 anything that is a waste of time. In this instance, I would
16 say it's premature and that we would not be well-served
17 quite yet to take up the Magistrate's time.

18 I would prefer to proceed with what Your Honor
19 has scheduled, and if we get to a point where we feel we are
20 making some progress but could use some help, if we could
21 have the liberty of requesting such a meeting then, I think
22 that would be most beneficial.

23 THE COURT: The only problem with that is a
24 practical one. That is that the Magistrate Judge's schedule
25 is so packed that failure to get on her schedule sooner

1 rather than later could moot out your ability to appear
2 before her if you later determine that were your desire.
3 She well-understands that counsel need to develop their
4 respective positions through discovery and otherwise before
5 scheduling you to come in.

6 So that shouldn't be a concern. She would reach
7 out to you and you would have an initial teleconference and
8 discuss such things as you just raised, Mr. Sager.

9 MR. SAGER: My primary concern is I would never
10 want settlement to delay the proceedings. Since that is not
11 really going to be an issue, we are going to go ahead with
12 discovery, I am more than happy to, whenever the Court deems
13 it appropriate, to meet with the Magistrate or do whatever
14 the Magistrate feels is appropriate.

15 THE COURT: I will go ahead and include a
16 paragraph referring the matter to the Magistrate Judge, to
17 Judge Thyng, and she will reach out to you in due course
18 and you will have a discussion, and she will manage that
19 process, along with the parties. Okay?

20 MR. SAGER: I am correct, Your Honor, that will
21 not impact or delay the schedule?

22 THE COURT: Not at all.

23 MR. ALTER: I certainly have no problems with
24 that. Let me also add, the Court directed the parties
25 confer on various discovery issues. I would add my personal

1 hope that they would also begin to discuss the possibility
2 of resolving the entire thing.

3 THE COURT: Absolutely. I expect that
4 sophisticated parties such as the Court has before it should
5 be able, without facilitation, to have that kind of
6 dialogue. Yes. Goes without saying.

7 MR. ALTER: For that reason, I will even add for
8 His Honor, in person, rather than phone conversation, might
9 be a good idea.

10 THE COURT: Well, I was trying to accommodate --
11 don't we have counsel in other states?

12 MR. ALTER: Between Delaware and New York and
13 New Jersey. It is not that far.

14 THE COURT: I agree.

15 MR. ALTER: We can do it.

16 THE COURT: To the extent that it would be
17 helpful, I am certainly willing to have you journey down to
18 Delaware and to meet in person. Okay?

19 Anything else, counsel, that we have not
20 covered?

21 UNIDENTIFIED SPEAKER: Your Honor, one request
22 for an interim time to be heard on the rent issue. It won't
23 go away, necessarily, with the decision of the appeal. If
24 Your Honor would schedule it for an hour sometime to be
25 heard on issue, it would be appreciated.

1 MR. ALTER: I would say at least one, maybe two
2 of their motions under advisement already address that
3 issue.

4 THE COURT: Is this addressed in the preliminary
5 injunction motion?

6 MR. ALTER: They have two motions under
7 advisement. I think it is addressed in at least one, maybe
8 both.

9 THE COURT: Mr. Seitz?

10 MR. SEITZ: Well, I guess the answer is yes, we
11 don't want to burden the Court with more pleadings. We want
12 to figure out a mechanism to be heard on the issue.

13 THE COURT: What I am asking, not very artfully,
14 is, my review of the papers that have been filed in support
15 of and in opposition to the preliminary injunction issue,
16 issuance of a preliminary injunction would help inform my
17 thinking on this. Is that correct?

18 MR. SAGER: I think that's right, Your Honor.
19 Mr. Alter's response to our motion for preliminary
20 injunction, which was filed by prior counsel, was
21 essentially it was not ripe because of a pleading issue.
22 When I suggested earlier that we don't want to burden the
23 Court with more paper, I could frankly see a circumstance
24 where Mr. Alter wants to put in substantive opposition now
25 that we have accommodated his concern about the pleadings

1 with an amended counterclaim.

2 All that said, I think what Mr. Seitz and I are
3 big advocates of, rather than burden the parties and the
4 Court with briefs and so forth, that the issues relating to
5 their occupancy really are quite simple and could be
6 addressed, I think, expeditiously, perhaps most
7 expeditiously with an in-person appearance, where we could
8 set forth the basic premises, and even if it would help Your
9 Honor submit five or ten-page position statements before we
10 came down, to clarify the issues. It is our effort to be
11 expedient but also to address an issue that frankly is of
12 monumental consequences to our clients.

13 THE COURT: Okay. Mr. Seitz, are you asking me
14 to schedule a date right now?

15 MR. SEITZ: I know Your Honor's schedule is a
16 disaster. But if Your Honor would give us a time now, that
17 would be appreciated.

18 MR. ALTER: Obviously, we will be pleased to do
19 whatever Your Honor wants. We think you have got enough
20 submissions on the subject that you probably don't need this
21 special appearance. If Your Honor wants us, we obviously
22 will be here.

23 THE COURT: That is what I was trying to
24 understand. Whether it be the preliminary injunction papers
25 or -- I am trying to get some direction from counsel as to

1 anything that has already been submitted that might help me
2 make a decision as to whether I want to hear from you or
3 need to hear from you.

4 MR. SAGER: I can try to respond to that. Here
5 is my concern. Their continued occupancy without paying
6 rent is a critical issue to us. Whether or not or
7 regardless of how Your Honor rules on the bankruptcy appeal,
8 we are trying to avoid the situation where we, A, have
9 extensive briefing over a matter of months that we feel
10 would really just rehash old issues. But Mr. Alter may very
11 well be entitled to do that.

12 And we are really suggesting an alternative to
13 that process, the ability to come in and do in an hour what
14 I think would extend over weeks or months for the parties of
15 briefing that really is not necessary.

16 So we are trying to come up with a procedure
17 here that would give Your Honor all the information and
18 background that you need to make a reasoned decision, while
19 simultaneously avoiding the need to submit more mountains of
20 papers in a case that is already very document-intensive.

21 THE COURT: I am all for that, Mr. Sager. I am
22 just wanting to understand a little better how you would
23 advance the issues and focus them and join them. Are we
24 talking about an evidentiary hearing?

25 MR. SAGER: It would probably not need to be

1 evidentiary, although I would certainly leave open the
2 possibility that one or both parties would want to bring a
3 witness. Essentially, what we are talking about here is a
4 determination of whether they can continue to occupy the
5 properties, and if so, whether they have to pay rent, or if
6 not, how they leave.

7 Because we are dealing with nursing homes, we
8 are not dealing with a situation where somebody can simply
9 be evicted or should be evicted on a moment's notice. These
10 things take time in terms of licensing requirements and
11 transition for the benefit of patients. They are real
12 people that are being impacted by this. And one of the
13 reasons we want to proceed in this manner is to accommodate
14 those concerns.

15 Now, Mr. Alter said at the outset we could go in
16 and file eviction motions in various state courts. I think
17 we could do that. But I am not so sure, more importantly,
18 that this Court can't do that if we reach that point.

19 So those are the types of issues that we could
20 address, I think, between Mr. Seitz and myself, we could do
21 so very, very quickly, and not waste any more of this
22 Court's time than would be with absolutely necessary.

23 MR. ALTER: Your Honor, they already have
24 pleadings which speak to this issue. They have preliminary
25 injunction motions which speak to this issue. They want to

1 do this by oral argument and get this relief. The relief is
2 already sought in the pleading. The relief is already
3 sought in motions. To the extent this Court thinks it
4 appropriate to grant that ultimate relief, you know,
5 obviously, you can do it. But that's the way to do it.
6 Either move for summary judgment on your claims, if you
7 think you can, or wait till trial, one or the other. Or
8 move for a preliminary injunction if you think you can do
9 that. But that's the orderly way to go about it.

10 MR. SAGER: If Mr. Alter is satisfied with the
11 record on the preliminary injunction as it currently exists,
12 and that's something he is prepared to have Your Honor
13 decide, I would accept that representation.

14 MR. ALTER: Frankly, I would have to go back and
15 look at that preliminary injunction record. I don't quite
16 recall what is in it. I believe my adversary is absolutely
17 correct that it may well have changed in light of the
18 pleadings. But I would have to go look at it. I can't
19 answer that question right now.

20 But the way to do it is by either motion for
21 summary judgment or by motion for preliminary injunction if
22 that is appropriate.

23 THE COURT: I am not prepared at this moment to
24 accede to your request, Mr. Seitz, because I would rather
25 try to look a little more extensively into the record, such

1 as it is, that has been developed thus far, insofar as the
2 papers that have been submitted in support and in opposition
3 to the preliminary injunction. I am not saying I won't
4 ultimately agree.

5 MR. SEITZ: May I make a suggestion?

6 THE COURT: Yes.

7 MR. SEITZ: We get Your Honor's ruling on the
8 appeal, then we schedule a call with the Court.

9 THE COURT: We can do that. We can come back
10 with you on that.

11 MR. ALTER: I certainly would agree with that.

12 THE COURT: Fair enough. What will happen is
13 that the Court will reach out to counsel either concurrent
14 with the issuance of its opinion or shortly thereafter for
15 purposes of scheduling a teleconference to further discuss
16 this matter.

17 MR. SEITZ: Thank you very much.

18 THE COURT: Take care.

19 (Counsel respond "Thank you.")

20 (Conference concluded at 12:40 p.m.)

21 - - -

22 Reporter: Kevin Maurer

23

24

25

EXHIBIT B

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March 13, 2006

VIA FACSIMILE

Amos Alter, Esq.
Troutman Sanders LLP
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405 Lexington Avenue
New York, NY 10174

Re: Integrated Health Services, Inc. et al. v. THCI Company LLC
Civil Action Nos. 03-610 and 04-910 (GMS)

Dear Amos:

During our telephone conversation on March 8, 2006, you raised concerns relating to subpoenas served on Rubin Schron and Leonard Grunstein, both of whom you represent. At that time, however, you were not prepared to advise me whether you were (a) objecting to the subpoenas in their entirety or (b) proposing a compromise, presumably based on limiting the scope of the subpoenas. Although I made clear that THCI would consider a reasonable compromise to avoid burdening the Court with this discovery issue, I understand your letter dated March 9, 2006 to indicate that neither of these witnesses intend to comply with the subpoenas for the reasons stated therein.

Your refusal to permit the requested discovery is directly contrary to the Court's instructions, during two separate telephone conference calls, that non-party discovery can and should proceed. Inasmuch as you fail to propose any compromise and, instead, choose to disregard the Court's rulings, I assume that you will request a third call with Judge Sleet (as per His Honor's instructions) to address this issue. I nevertheless reiterate my offer to work with you regarding the scope of the subpoenas should you wish to reconsider.

Very truly yours,



DAVID S. SAGER

cc: Michael Lastowski, Esq.
Collins J. Seitz, Esq.

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